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In the

Supreme Court of the United States.

OCTOBER TERM, 1943.

No. 361

EDITH F. PERLEY,
Petitioner,

v.

FRANK W. ROBERTS ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

AND

BRIEF IN SUPPORT OF PETITION.

EDITH F. PERLEY,
Pro se.

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PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner respectfully submits the following petition for writ of certiorari and prays that the same may issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit entered on November 3, 1943, affirming the judgment of the District Court of the United States for the District of New Hampshire.

JURISDICTION.

The jurisdiction of the United States District Court rested upon the provisions of U. S. Code, Title 28, Sec. 41, ¶ 1.

Jurisdiction of the United States Circuit Court of Appeals rested upon the general appellate provision in U. S. Code, Title 28, Sec. 225, (a).

Jurisdiction to review this case exists under Judicial Code, Sec. 240 (a), as amended by Act of February 13, 1925, c. 229, s. 1; 43 Stat. 938; U. S. Code, Title 28, c. 9, s. 347.

JUDGMENT.

The date of entry of judgment in the case sought to be reviewed was November 3, 1943. The judgment was rendered by the Circuit Court of Appeals for the First Circuit (R. p. 105).

STATEMENT.

This is a suit brought by the plaintiff petitioner for malicious attachment on the plaintiff's real estate July 18, 1941.

The plaintiff's complaint alleged:

That the defendants, Atty. William N. Rogers, acting for his principal, the above-named Frank W. Roberts, on or about July 18, 1941, did maliciously attach the plaintiff's real estate in Effingham, Carroll County, New Hampshire, with no legal foundation for such action, which action was dismissed by the Court: Civil, 5316, May Term, Carroll County, 1942;

That said defendants have refused to give the plaintiff proper legal release of the said attachment for the record.

That said defendants have maliciously conspired and greatly harassed the plaintiff and have deprived her of the enjoyment and proper use and disposal of her property, and have trespassed upon her citizen's rights under the Federal Constitution and under the Constitution of the State of New Hampshire, to the protection of law, and to due process of law, and have done her great damage.

Wherefore, the plaintiff demands judgment against the above-named defendants in the sum of Ten Thousand Dollars and costs, and prays that the Court enjoin said defendants that they desist from further nuisance and molestation of the plaintiff's Constitutional Rights (R. p. 2).

POINTS TO BE URGED.

The Circuit Court of Appeals erred:

1. In its failure to take judicial notice of the fundamental principle of the institution of all legal actions that there must be a legal cause,—which is the primary point in issue in this case.

2. In its abandonment of the plaintiff's primary point in issue as argued in her brief before the Circuit Court of Appeals,—that there had accrued to the defendants no cause of action.

3. In their statement in the Opinion (page 103), "in which she (Miss Perley) *alleges* that the defendants in the action at law *for costs* referred to above", whereas Miss Perley *alleges* that the defendants attached her real estate "With no legal foundation for such action". Complaint (R. p. 2).

4. In their statement (Opinion p. 102) "—the order of the Superior Court with respect thereto still standing—", failing to take judicial notice that Judge Burque's order was not a *final judgment* for costs, and *no cause of action had accrued.*

5. In their statement (Opinion p. 102) "and *thereupon* the Superior Court, on the plaintiff's motion, dismissed the action for costs" whereas there was no *action for costs,*— there was no declaration when the attachment was made, and Miss Perley's two motions to dismiss were filed in October and December of the year before.

6. In their failure to take note that, as the record shows, there was *never a final judgment for costs,* and, therefore, the defendants' answer contained much matter "immaterial and impertinent". There was *no cause* found in said matter on which the defendants could base an action.

7. In their failure to note that only hearsay evidence was

given to link the attachment case with Equity 1880 (R. p. 15, "Have you").

8. In their failure to note that the law of New Hampshire does not provide that a *defendant in equity* may attach the plaintiff's property.

9. In their failure to note Miss Perley's exception to the linking of the attachment case with the equity case (R. p. 16), for the records show no final judgment for costs.

10. In holding that the Supreme Court's decision in sustaining the plaintiff's exceptions in *Perley* v. *Roberts,* 92 N. H. 135 dismissed the attachment case: Civil, 5316, *Roberts* v. *Perley.*

11. In their failure to consider the "punitive" measures taken by the defendants, contrary to law, to secure costs.

12. In their failure to find in this attachment case malicious abuse of process.

13. In affirming the judgment of the United States District Court of New Hampshire.

14. In the failure of His Honor, Judge Peter Woodbury, to use his judicial discretion to retire from sitting in the United States Circuit Court of Appeals for the First Circuit on this case 3910, *Perley* v. *Roberts et al.*

15. In the violation of Judicial Code, Sec. 240, by His Honor, Judge Peter Woodbury, as a "judge before whom a cause or question may have been tried or heard in a lower court is disqualified from sitting in the Circuit Court of Appeals on the hearing and decision of any questions in the same cause which involves in any degree matter on which he had occasion to pass in the lower court. 28 U.S.C.A. Sec. 216, note 3, *Moran* v. *Dillingham,* 174 U.S. 153.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. Justice has miscarried.

2. The violation of the Judicial Code which disqualifies a judge to sit in the Circuit Court of Appeals after passing judgment involved in a lower court. His Honor, Judge Peter Woodbury sat in the New Hampshire Supreme Court at the hearing on the plaintiff's appeal to that Court, 91 N.H. 254, *Perley* v. *Roberts,* Opinion p. 102 from the Superior Court decree in Equity 1880, Carroll, SS. *Perley* v. *Roberts,* the same case to which the same defendant and his attorney, defendants in this case, seek to link their attachment case: Civil 5316, *Roberts* v. *Perley.* The decision of the U. S. Circuit Court of Appeals in affirming the judgment of the U. S. District Court of New Hampshire is obviously biased toward the defendants and prejudiced against the plaintiff.

3. That the standard of the morale of the present judiciary be not impeached by the on-coming administrators of Justice.

The plaintiff respectfully submits the foregoing reasons, and prays that the petition for a writ of certiorari to the United States Circuit Court of Appeals shall be granted.

EDITH F. PERLEY, *Pro se.*